

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOE HOOVEN et al.,	:	Civil Action
Plaintiff	:	No. 00-5071
	:	
v.	:	
	:	
EXXON MOBIL CORPORATION and MOBIL	:	
CORPORATION EMPLOYEE SEVERANCE	:	
PLAN,	:	
Defendants	:	

MEMORANDUM OPINION AND ORDER

J. RUFÉ

February 14, 2005

Before the Court are Plaintiffs' Motions for a Determination of Attorneys' Fees and Expenses and for an Award of Prejudgment and Post-judgment Interest.¹ This follows the Court's March 31, 2004 ruling that Defendants breached a unilateral contract called the Change in Control Plan Summary Plan Description ("SPD") with Plaintiffs.

I. Background²

In 1999, Exxon and Mobil were preparing for a merger. The merger was expected to result in the loss of approximately 9,000 to 12,000 jobs. As an incentive to employees to remain with Mobil pending the merger despite the uncertainty of employment in the merged company ("Exxon Mobil"), Mobil included a program of enhanced severance benefits for employees in the Change in Control Plan ("CIC Plan"). To explain the CIC Plan to employees, Mobil developed a

¹ Plaintiffs have filed two Motions for Attorneys' Fees: one pursuant to the contractual provisions of the CIC Plan ("CIC Plan Motion"), and the other pursuant to fee-shifting provisions of ERISA ("ERISA Motion").

² Additional factual details and legal analysis are found in the Court's March 31, 2004 Memorandum Opinion and Order.

SPD and distributed it to employees, including Plaintiffs, in August 1999.

Most relevant to this case, the CIC Plan contained a severance benefit eligibility *exception* with respect to divestitures affecting tier four employees, such as Plaintiffs.³ Specifically, it stated that tier four employees who were offered comparable employment with the purchaser or successor after divestiture would not receive enhanced severance benefits. However, the SPD distributed to employees did not accurately reflect this provision. Instead, the SPD implied that tier four employees would receive an enhanced severance package if they did not receive an offer of employment from Exxon Mobil after the merger. The SPD did not contain an exception for divestiture.

After the change in control on November 30, 1999, Mobil divested Plaintiffs' entire division (the Mid-Atlantic Marketing Assets Division) to Tosco Corporation.⁴ At a meeting on December 2, 1999, Mobil informed Plaintiffs that: 1) they would not be offered jobs with Exxon Mobil; 2) they were all being offered comparable employment at Tosco; and 3) as tier four employees who had been offered equivalent employment pursuant to a divestiture, they would not be receiving severance benefits under the CIC Plan.

Believing they were entitled to enhanced severance benefits under the SPD, Plaintiffs filed this lawsuit advancing claims for breach of fiduciary duty, equitable estoppel, common law breach of contract, and reporting and disclosure violations under the Employee Retirement Income

³ The text of the CIC Plan was not distributed to employees but was available to employees upon request.

⁴ The divestiture of this division was required by the FTC. The FTC also advised that Exxon and Mobil should make employees in the divested business available to the buyer, which they did. Tosco was not under any obligation to hire the former Mobil employees, but the Chairman of Tosco offered jobs to all employees of Mobil's Mid-Atlantic Marketing Assets Division at comparable or improved salaries and benefits.

Security Act of 1974 (“ERISA”). Plaintiffs succeeded on the common law breach of contract claims. (Count III of their complaint).

Under ERISA, companies have an affirmative obligation to inform employees of their rights through written plan documents.⁵ The SPD, a required document, is the primary informational document issued to plan beneficiaries to inform them of their rights and obligations.⁶ The contents of the SPD and the language used to communicate the contents are carefully proscribed by statute and regulation.⁷ Of particular importance here, ERISA requires that the SPD must contain a description of any circumstances that may result in disqualification, ineligibility, denial, or loss of benefits.⁸ The Third Circuit has ruled that where there is a conflict between a plan document and a summary plan description, the summary plan description governs.⁹ In this case, because of discrepancies between it and the CIC Plan, the Court found that the SPD governed Plaintiffs’ situation.

The SPD formed a unilateral contract, which was accepted when the Plaintiffs chose to stay on through the uncertainties of the change in control rather than seeking other employment. The Third Circuit has directed the courts to apply federal common law contract principles to claims

⁵ Curtis-Wright Corp. v. Schoonejongen, 514 U.S. 73, 83 (1995).

⁶ Local 56, United Food and Comm. Workers Union v. Campbell Soup Co., 898 F. Supp. 1118, 1130 (D.N.J. 1995).

⁷ 29 U.S.C. §§ 1021-24; 29 C.F.R. § 2520.102-3(1).

⁸ 29 U.S.C. § 1022(b).

⁹ Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. and Research Fund, 334 F.3d 365, 378 (3d Cir. 2003).

for plan benefits.¹⁰ Accordingly, Plaintiffs were not required to prove reliance upon the SPD in order to enforce their claim for severance benefits.¹¹ The Court found absolutely no indication in the text of the SPD that tier four employees who were terminated from Mobil but offered comparable employment after divestiture would be ineligible for enhanced severance benefits. A provision in the CIC Plan precluded Mobil from amending the terms of the Plan within two years of the change in control, so the errata to the SPD, issued after the change in control, did not change the Plaintiffs' rights under the original SPD. Therefore, the Court found that Defendants were in breach of contract and ordered Defendants to provide Plaintiffs with enhanced severance benefits in accordance with the terms of the SPD.¹²

II. Attorneys' Fees

A. Fees under the CIC Plan

Plaintiffs claim that the CIC Plan compels Defendants to pay Plaintiffs reasonable attorneys' fees and expenses. They further argue that the payments by each Plaintiff of 33 1/3% of his or her recovery incurred under the contingency fee agreement between each Plaintiff and counsel were reasonable fees to incur in the matter and should be fully reimbursed by Defendants. Plaintiffs rely upon this language in the CIC Plan:

The Company shall pay to each Eligible Employee all reasonable legal fees and expenses incurred by such Eligible Employee in pursuing any claim under the Plan in which such Eligible Employee

¹⁰ Id. at 381.

¹¹ Id.

¹² Plaintiffs did not succeed on their claims for breach of fiduciary duty or equitable estoppel because they did not prove detrimental reliance on the SPD.

prevails in any material respect.

Defendants respond that: 1) any claim for fees must be pursued with the CIC Plan Administrator before petitioning the Court; 2) the CIC Plan is only required to pay attorneys' fees for claims under the administrative claims procedure, not for claims pursued through a lawsuit; 3) Plaintiffs did not advance a claim for denial of benefits under the CIC Plan, so Plaintiffs have not prevailed on a claim under the CIC Plan, as required for an award of attorneys' fees; and 4) should the Court award attorneys' fees, it should: a) calculate a reasonable fee using the lodestar method rather than the percentage of recovery method; and b) limit fees to time spent on Count III of the Complaint (the only Count on which Plaintiffs succeeded).

First, the Court finds that it would be futile for Plaintiffs to pursue attorneys' fees with the CIC Plan Administrator, and will not require them to do so.¹³ Second, the Court finds nothing in the CIC Plan which limits the term "claim" to an administrative claim. The plain meaning of the term "claim" includes claims made in federal court.¹⁴ Third, Plaintiffs prevailed on a claim for breach of contract, where a unilateral contract was formed by Plaintiffs' implied acceptance of the SPD through remaining in the company's employ pending the change in control. The discrepancy between the CIC Plan and the SPD was an important factor in the Court's ruling. The Court ordered Defendants to provide severance benefits to Plaintiffs in accordance with the SPD. Because the SPD summarizes the CIC Plan, the Court finds that Plaintiffs prevailed on a claim under

¹³ The Court has previously addressed this argument on the merits and found that Plaintiffs were not required to pursue their underlying claims with the plan administrator because the administrative review process would have been futile in this matter. Mem. Op. and Order dated March 31, 2004, at 45.

¹⁴ It is well established that the Court is not authorized to construe a contract in such a way as to modify the plain meaning of its words, under the guise of interpretation. Mellon Bank, N.A. v. Aetna Bus. Credit, Inc., 619 F.2d 1001, 1010 (3d Cir. 1980).

the CIC Plan and are contractually entitled to reasonable attorneys' fees.

Plaintiffs ask the Court to award attorneys' fees based on the contingency fee agreements between Plaintiffs' and their counsel. Defendants ask the Court to award attorneys' fees based on the lodestar method, and suggest that the Court should further reduce the award by granting fees only for time spent litigating the one successful claim.

The Court will first address Defendants' request that attorneys' fees only be awarded for time spent litigating Count III. The plain language of the CIC Plan obligates the Defendants to pay all reasonable fees incurred in pursuing a claim in which the employee prevails in *any material respect*. Where a plaintiff is deemed prevailing although he succeeded on only some claims for relief, the court must address two questions: 1) did plaintiff fail to prevail on claims that were unrelated to claims on which he succeeded; and 2) did plaintiff achieve a level of success that makes the hours expended a satisfactory basis for a fee award?¹⁵

Here, the four counts in the Complaint were pled as alternative theories of the case, and they were all related claims. Furthermore, although Plaintiffs prevailed only on the theory set forth in Count III, the Court awarded them the full amount of the enhanced severance benefits they sought.¹⁶ Since the remedy was fully favorable to Plaintiffs, and Plaintiffs prevailed in a "material respect,"¹⁷ the Court will not limit attorneys' fees to the actual time spent litigating Count III. Such a limitation is also not anticipated by the attorneys' fees provision of the CIC Plan. Furthermore,

¹⁵ See Hensley v. Eckerhart, 461 U.S. 424, 434 (1983).

¹⁶ Id.

¹⁷ Maher v. Gagne, 448 U.S. 122, 127 (1980)(holding that a party prevails if it has won substantially the relief originally sought in its pleadings).

it is quite apparent that such parsing of claims would be impossible given the nature of the litigation in this matter.¹⁸

The Court turns now to the final question: whether it is appropriate to award attorneys' fees based on the contingency fee agreements between Plaintiffs and their counsel.¹⁹ If so, these agreements to pay counsel 33 $\frac{1}{3}$ % of any recovery achieved would yield approximately \$2 million in attorneys' fees, based on an estimated recovery for Plaintiffs in the amount of \$6 million.²⁰ In contrast, a calculation of fees using the lodestar method would yield approximately \$1.24 million in fees by Plaintiffs' estimate.²¹ The contingency fee requested is approximately 61% higher than counsel's fees would be based on a lodestar calculation. The Court recognizes that the CIC Plan language regarding attorneys' fees manifests a compensatory rationale: to compensate beneficiaries for monetary outlays they would not have had to make but for Defendant's breach of the contract. Since it is undisputed that the Plaintiffs incurred fees in the amount of 33 $\frac{1}{3}$ % of their recovery, the Court must decide whether the sum incurred was reasonable.

¹⁸ See Gorini v. AMP, Inc., No. 03-2052, 2004 WL 2809997, at *3 (3d Cir. Dec. 8, 2004) (when much of counsel's time is spent litigating case as a whole, and claims involve a common core of facts and/or related legal theories, it may be difficult to divide hours spent on a claim-by-claim basis; instead, district court should focus on the significance of overall relief obtained by the plaintiff in relation to hours reasonably spent on litigation); see also Hensley, 461 U.S. at 435.

¹⁹ The Third Circuit favors the use of contingency fees in cases involving a common fund, and the lodestar method in cases involving fee shifting statutes. In re Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d 283, 333 (3d Cir. 1998). This case involves neither a common fund nor a fee shifting statute, but rather a contract term providing that Defendants will pay all reasonable attorneys' fees and expenses incurred by prevailing employees. As the fees will be paid by Defendants and not by Plaintiffs from a common fund, the situation is more akin to a statutory fee shifting case. However, unlike statutory fee-shifting, contractual fee-shifting is not subject to the *prohibition* on contingency enhancements to the lodestar calculation of fees. See City of Burlington v. Dague, 505 U.S. 557, 565 (1992) (holding that federal fee-shifting statutes do not permit enhancement of fee award beyond lodestar amount to reflect fact that a party agreed to pay on a contingency-fee basis).

²⁰ Pls.' CIC Plan Reply at 10.

²¹ Defendants' contentions regarding this figure are discussed in detail below.

This Court has wide discretion in awarding reasonable attorneys' fees.²² The starting point for calculating "reasonable" attorneys' fees in a case is the product of the number of hours reasonably expended on the litigation and a reasonable hourly rate (the lodestar figure).²³ In addition, the computation of attorneys' fees may reflect two additional factors: the contingent nature of success and the quality of the attorneys' work.²⁴ When considering the contingent nature of success, the Court must consider: 1) the probability or likelihood of success viewed at the time of filing the suit; 2) the probability of the defendant's liability; 3) whether the case is asserted under well-settled law or is advancing a novel theory; 4) whether damages will be easy or difficult to prove; 5) risks assumed by counsel in developing the case, including the number of hours of labor risked without guarantee of remuneration, costs to the firm of processing motions, taking depositions, etc., and the development of prior expertise; and 6) the delay in receipt of payment for services rendered.²⁵ The Court may also adjust upward or downward from the lodestar figure based on the quality of counsel's work, which can be assessed by examining: 1) the results obtained for the plaintiffs in comparison with the best possible recovery; 2) the overall benefit conferred on the plaintiffs; and 3)

²² See Lindy Bros. Builders, Inc. of Philadelphia v. Am. Radiator & Standard Sanitary Corp., 540 F.2d 102, 115 (3d Cir. 1976) (award of reasonable attorneys' fees is within the district court's discretion); Nationwide Energy Corp. v. Kleiser, No. 84-3517, 1987 WL 10655, at *2-3 (E.D. Pa. May 7, 1987) (holding that when contracts provide for payment of reasonable attorneys' fees and litigation expenses, the court has equitable control over what constitutes a reasonable recovery for attorneys' fees and expenses).

²³ Lindy Bros. Builders, Inc., 540 F.2d at 108.

²⁴ Id. at 112-115. See also Merola v. Atlantic Richfield Co., 493 F.2d 292, 297 (3d Cir. 1974) (holding that in enforcing a contractual agreement to pay reasonable attorneys' fees, courts should apply Lindy standards to determine amount of award. The lodestar factors—time spent and reasonable hourly rates—produce the market value of attorneys' services, and the contingency and quality factors "permit the district judge the needed flexibility to tailor the award to the actual performance of counsel.")

²⁵ Lindy Bros. Builders, Inc., 540 F.2d at 117.

counsel's professional methods.²⁶

Turning first to the number of hours spent in litigation, the Court has reviewed time records submitted by Plaintiffs' counsel,²⁷ which document over 6000 hours of work on this case.²⁸ The total was reduced by 62 hours, which counsel felt were unnecessary to achieving success for their client.²⁹ Defendants take issue with the number of hours spent in this litigation, arguing that the hours claimed by counsel are grossly excessive, unreasonable, and duplicative, and also that many of the hours charged were spent on issues of law on which the Plaintiffs did not ultimately prevail. The Court has already addressed the latter issue. As to the allegedly excessive nature of the hours billed, the Court disagrees with Defendants.

For work to be included in a calculation of attorneys' fees, it must be useful and of the type ordinarily necessary to secure the final result.³⁰ This case involved fifty-two named plaintiffs, and counsel were required to address discovery requests directed at each plaintiff. The case also involved extensive motion practice and unsettled issues of law. Submitting and responding to motions, especially on unsettled or novel issues of law, can be time consuming and involve extensive research. Even experienced attorneys must engage in many hours of research when

²⁶ Id. at 117-118.

²⁷ Guernsey Aff. and attachs. 1- 3.

²⁸ Plaintiffs' counsel have provided the Court with what appear to be contemporaneously documented time records. These records include the identity of the attorney or paralegal, the date, the activity, and the time spent on the activity tracked in 1/10 hour increments. Guernsey Aff. attach. 1. The time keeping records submitted to the court are as detailed as those kept by counsel who are billing clients at an hourly rate. In addition to these detailed records, Plaintiffs have submitted summary charts and affidavits regarding the time spent on various tasks. Guernsey Aff. and attach. 2.

²⁹ Guernsey Aff.

³⁰ Planned Parenthood of Cent. N.J. v. Att. Gen. of State of N.J., 297 F.3d 253, 266 (3d Cir. 2002).

confronted with unsettled issues of law. Furthermore, it was not unreasonable to sometimes assign more than one attorney to work on similar tasks in this case.³¹ The Court notes that this case involved an eight day trial, during which both Plaintiffs and Defendants had multiple attorneys in the courtroom, and counsel for both sides were extremely well prepared. The Court has no doubt that counsel's representation of the fifty-two plaintiffs in this matter consumed a great deal of time fact finding, taking and defending depositions, producing and reviewing other discovery, performing legal research, drafting motions and briefs, preparing Plaintiffs' case for trial, appearing in court, and other tasks. The Court has reviewed Plaintiffs' detailed documentation of time spent by counsel on each of these tasks and others, and the Court does not find the time spent to be excessive or the staffing to be unnecessarily redundant.

Next, the Court must make a finding as to prevailing market rates to determine whether Plaintiffs' fee request is reasonable.³² Counsel set different hourly rates for paralegals, associates, and partners, and the rates for associates and partners increased with years of experience.³³ Plaintiffs submitted documentation to prove that the hourly rates suggested are

³¹ Id. at 272 (upholding district court's finding that the magnitude and complexity of the case mandated the help of numerous attorneys for both sides, and holding that attorneys working on similar tasks is not per se duplicative since careful preparation often requires collaboration and rehearsal).

³² Burney v. Housing Auth. of Beaver County, 735 F.2d 113, 116 (3d Cir. 1984).

³³ The firm calculated the lodestar using the following billing rates: \$120 per hour for paralegals, \$195 to \$240 per hour for associates, depending on experience, and \$285 and \$380 per hour for the two partners. Another partner in the firm charged \$545 per hour for his work, but only spent about ten hours on the case. Guernsey Aff. In calculating the lodestar amount, Plaintiffs multiplied the number of hours each attorney or paralegal spent on the case by the hourly billing rate for that individual, and then added these products together to produce the lodestar sum. Pls.' ERISA Mot. at 12. But cf. In re RiteAid Corp. Sec. Litig., No. 03-2914, 2005 WL 159464 (3d Cir. Jan. 26, 2005) (reversing finding that attorneys' fees were reasonable where district court failed to use "blended billing rate")(this case is not binding on the Court, since it involved a fee petition from a common fund in a class action suit, but it is advisory).

consistent with prevailing market rates in the community.³⁴ The Court finds that the suggested hourly rates are reasonable and consistent with the market rates in the Philadelphia region.

Defendants have not alleged that the hourly rates Plaintiffs' counsel suggest are inconsistent with current local rates, but they argue that the Court should calculate the lodestar using the hourly rates in effect when the time was spent, not counsel's current hourly rates.³⁵ The Third Circuit has explicitly disapproved such a practice: "When attorney's fees are awarded, the current market rate must be used. The current market rate is the rate at the time of the fee petition, not the rate at the time the services were performed."³⁶ The Court finds that Plaintiffs correctly used their current, reasonable billing rates when calculating the lodestar figure. Therefore, the Court finds that Plaintiffs' lodestar calculation of \$1,244,690.00 is reasonable.

Plaintiffs' counsel have also provided detailed documentation of costs incurred, broken down by type of expense (e.g. costs of court reporters, transcripts, electronic research of legal issues, photocopying, postage, travel, etc.). The Defendants have not disputed the evidence regarding the costs Plaintiffs' counsel incurred, nor have they suggested that the documented costs are not of the type normally charged to fee-paying clients in the Philadelphia region. The Court finds that the costs incurred are not excessive, and are of the type typically passed on to clients in this

³⁴ Pls.' ERISA Mot., Ex. B, C, D. Exhibit B is an affidavit from an attorney at another local firm, in which the affiant attests that the rates and costs requested by Plaintiffs' counsel are consistent with what other local firms charge clients for ERISA litigation. The comparison figures provided in Exhibit C and D contain information about the 2003 hourly rates for comparable law firms and Community Legal Services, Inc.

³⁵ Defs.' ERISA Mem. at 10.

³⁶ Lanni v. New Jersey, 259 F.3d 146, 149 (3d Cir. 2001); see also Missouri v. Jenkins by Agyei, 491 U.S. 274, 283-284 (1989) (finding that application of current rather than historic hourly rates is an appropriate adjustment for delay in payment of attorneys' fees).

region.³⁷ Accordingly, Plaintiffs' request for costs in the amount of \$89,091.72 is reasonable.

Plaintiffs ask the Court to increase the lodestar figure to approximately \$2 million (which represents 33⅓% of Plaintiffs' approximately \$6 million recovery). This represents a 61% increase over the lodestar amount. Therefore, the Court must consider whether two additional considerations, the contingent nature of success and the quality of counsel's work, warrant such an enhancement.³⁸

As noted above, the Plaintiffs entered into a contingency fee agreement with counsel. In advancing Plaintiffs' claims, counsel have documented over 6000 hours of legal work, all performed without guarantee of remuneration. Counsel have also incurred almost \$90,000 in costs for the case, including the costs of court reporters, transcripts, electronic legal research, travel and copies, again without guarantee of remuneration. Furthermore, this case was filed in October 2000, meaning that Plaintiffs' counsel worked on this matter for over four years without any payment for services rendered. They agreed to represent fifty-two plaintiffs in this complex case involving unsettled questions of law, and the probability of success was by no means certain. Although all of these factors support awarding a fee enhancement, the Court acknowledges that these contingencies may be generously compensated by an award of fees based on the lodestar figure, since such an award incorporates: 1) higher rates for more experienced attorneys; 2) charges for additional hours spent researching and briefing unsettled areas of law; and 3) current hourly rates for work performed

³⁷ See Planned Parenthood of Cent. N.J., 297 F.3d at 267 (reasonable attorneys' fees include award of reasonable out-of-pocket expenses normally charged to a fee-paying client in the course of providing legal services).

³⁸ Merola, 493 F.2d at 297.

in the past.³⁹

Turning to the quality of counsel's work, the Court finds that Plaintiffs derived significant benefit from the lawsuit, receiving approximately \$6 million in severance pay among the fifty-two of them. In a difficult case,⁴⁰ counsel attained a judgment for the full value of the enhanced severance benefits to which Plaintiffs believed they were entitled under the SPD. Throughout this litigation, the Court has been impressed by the quality of counsel's work. The Court finds that the quality and effectiveness of counsel's representation of the fifty-two plaintiffs in this case warrants fees exceeding the level of compensation provided based on the lodestar calculation. This factor thus supports an enhancement of fees. The enhancement requested, a multiplier of approximately 1.61, seems fair and reasonable considering both the quality of counsel's work and the compensatory rationale of the CIC Plan's fee-shifting provision. Accordingly, the Court finds that the requested fee amount, 33 $\frac{1}{3}$ % of the Plaintiffs' recovery, is fair and reasonable and awards Plaintiffs the full amount of attorneys' fees incurred.

B. Fees Under ERISA

Plaintiffs have also filed a Motion for Attorneys' Fees under the fee shifting provisions of ERISA. In this Motion, they ask the Court to calculate fees using the lodestar method, and to enhance the lodestar figure to cover the full amount Plaintiffs owe their counsel under their

³⁹ See City of Burlington, 505 U.S. at 562-563 (enhancement of attorneys' fees for contingency is unnecessary as higher hourly rates for more experienced counsel and higher number of hours worked to overcome the uncertainty of outcome already compensate attorneys adequately).

⁴⁰ Defendants themselves emphasize the uncertainty of Plaintiffs' success in their response to Plaintiffs' fee request: "the issue [of validity of a federal common law contract claim based on an SPD] is so close that after the parties each submitted briefs regarding the impact of the Burstein decision, the Court held extensive argument in chambers regarding the issue." Defs.' ERISA Mem. at 9.

contingency fee agreements. They also ask for costs.

There is no presumption in favor of granting attorneys' fees to a successful plaintiff in an ERISA suit, absent exceptional circumstances.⁴¹ ERISA authorizes the Court, in its discretion, to award prevailing plan beneficiaries reasonable attorneys' fees and costs.⁴² The Third Circuit has articulated a five factor test for the Court to consider: 1) the offending party's culpability or bad faith; 2) the ability of the offending party to satisfy an award of attorneys' fees; 3) the deterrent effect of an award of attorneys' fees against the offending party; 4) the benefit conferred on members of the Plan as a whole; 5) and the relative merits of the parties' positions.⁴³

Applying these factors to this case, the Court finds they do not support an award of attorneys' fees under ERISA.⁴⁴ First, the Court does not find that Defendants are culpable, nor that their actions involved bad faith. ERISA required Defendants to fully disclose any coverage exclusions in the SPD, but Defendants failed to incorporate the exclusion applying to tier four employees in the case of divestiture. During the trial in this matter, the Court reviewed the many draft versions of this provision of the SPD. The Court concluded that Defendants were taking care to represent the CIC terms correctly in the SPD but made an error in judgment at the end of the editing process in an effort to make the ineligibility provision clearer. Further, Defendants published the correct information on Mobil's intranet site. The Court found that Mobil did not intentionally

⁴¹ McPherson v. Employees' Pension Plan of Am. Re-Ins. Co., Inc., 33 F.3d 253, 254 (3d Cir. 1994).

⁴² Id.

⁴³ Id. (citing Ursic v. Bethlehem Mines, 719 F.2d 670, 673 (3d Cir. 1983)).

⁴⁴ The Court notes, as a preliminary matter, that Plaintiffs prevailed not on an ERISA claim, but on a common law breach of contract claim related to their ERISA claims.

deceive its employees; rather it had made the mistake of inartful drafting. Clearly, there was no bad faith, and simple negligence is not enough to establish “culpable” behavior.⁴⁵ Therefore, this factor does not weigh in favor of attorneys’ fees.

The second factor, Defendants’ ability to satisfy the award of attorneys’ fees, clearly weighs in favor of an award of fees.

Factor three examines the deterrent effect of an award of attorneys’ fees. Under the CIC Plan, Plaintiffs were clearly ineligible for enhanced severance benefits. However, the last version of the SPD was unintentionally misleading as to ineligibility of divested tier four employees. As noted above, the Court did not find a corporate philosophy of non-disclosure or culpable behavior; rather Defendants made an error in judgment at the last stages of drafting the SPD. Though ultimately unsuccessful, Defendants clearly made a good-faith effort to ensure that the SPD correctly summarized the CIC Plan. The Court finds that an award of attorneys’ fees would not have a significant deterrent effect given the facts of this case. Therefore, factor three weighs against an award of attorneys’ fees.

Fourth, the Court looks at the benefit conferred on other Plan members by the Court’s judgment. The CIC Plan’s terms could be modified at the discretion of the company starting in December 2001. The errata Exxon Mobil issued to fix the discrepancy between the CIC Plan and the SPD (issued before the filing of this lawsuit) would have become effective on that date. Furthermore, the SPD/ CIC Plan discrepancy at issue in this case affected only a subset of CIC Plan beneficiaries— consisting of tier four employees who were offered jobs with an acquiring company

⁴⁵ McPherson, 33 F.3d at 257.

after a divestiture related to the Exxon Mobil merger— which subset included the fifty-two Plaintiffs.⁴⁶ All other Mobil employees who were terminated after the merger with Exxon (approximately 2500 employees) were eligible for enhanced severance benefits under the terms of both the CIC Plan and the SPD, so the holding of the Court in this case would not affect their rights. For these reasons, the Court cannot conclude that its decision creates benefits for CIC Plan members as a whole. This factor weighs against an award of attorneys' fees.

Finally, the Court considers the relative merits of the parties' positions. Plaintiffs received a favorable decision on Count III, but Defendants received a favorable decision on Counts I, II, and IV. Plaintiffs' position on Count III was by no means a matter of well-settled law. The issue was a close one, and Defendants' position was reasonable and not frivolous.⁴⁷ Again, this factor does not support a finding of attorneys' fees.

Having found that the only factor that weighs in Plaintiffs' favor is Defendant's ability to pay, the Court finds Plaintiffs are not entitled to attorneys' fees under ERISA.

III. Prejudgment and Post-Judgment Interest

The award of prejudgment interest to Plaintiffs is within the Court's discretion and should be based on considerations of fairness.⁴⁸ Generally, such awards are used to make a plaintiff whole when he has been denied use of money that is his.⁴⁹ The Court finds that considerations of

⁴⁶ The Court has heard no evidence as to whether there were other tier four employees, besides the fifty-two Plaintiffs, who were subject to divestiture.

⁴⁷ Home for Crippled Children v. Prudential Ins. Co. of Am., 590 F. Supp. 1490, 1508 (W.D. Pa. 1984).

⁴⁸ Ambromovage v. United Mine Workers of Am., 726 F.2d 972, 981-982 (3d Cir. 1984).

⁴⁹ Id. at 982.

fairness require an award of prejudgment interest in this case and awards such interest, calculated at the statutory federal post-judgment interest rate⁵⁰ from December 2, 1999, the date Defendants constructively terminated Plaintiffs.⁵¹ The Court also awards Plaintiffs post-judgment interest pursuant to 28 U.S.C. § 1961.⁵²

⁵⁰ 28 U.S.C. §1961.

⁵¹ See, e.g. Thomas v. Bd. of Tr. of Int'l Union of Operating Eng'rs, Local 542, Pension Fund, No. 97-CV-2426, 1998 WL 334627, at *13 (E.D. Pa. June 24, 1998) (awarding prejudgment interest calculated at federal statutory post-judgment interest rate).

⁵² Defendants argue that Plaintiffs did not obtain a “money judgment” against Defendants, because ERISA limits recovery to equitable relief. Defs.’ CIC Plan Resp. at 13. This argument is simply incorrect. The Court found that Defendants were in breach of their contract with Plaintiffs under federal common law, and awarded Plaintiffs the severance benefits owed to them under the contract. The Court awarded approximately \$6 million in monetary damages to Plaintiffs. Mem. Op. and Order dated March 31, 2004.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOE HOOVEN et al.,	:	Civil Action
Plaintiffs	:	No. 00-5071
	:	
v.	:	
	:	
EXXON MOBIL CORPORATION and MOBIL :		
CORPORATION EMPLOYEE SEVERANCE :		
PLAN,	:	
Defendants		

ORDER

AND NOW, this 14th day of February, 2005, upon consideration of Plaintiffs' Motion for Determination of Attorneys' Fees and Expenses and an Award of Prejudgment and Post-Judgment Interest [Doc. # 129], Defendants' Response thereto [Doc. # 133], and Plaintiffs' Reply [Doc. # 139] and upon consideration of Plaintiffs' Motion for an Award of Attorneys' Fees and Costs Under ERISA [Doc. # 144] and Defendants' Response thereto [Doc. # 149], and for the reasons set forth in the attached Memorandum Opinion, it is **ORDERED** as follows:

1. Plaintiffs' Motion for Prejudgment Interest is **GRANTED**. Defendants are **ORDERED** to include a payment of pre-judgment interest in their calculation of Plaintiffs' severance benefits, calculated from December 2, 1999 through March 31, 2004, at the rate set forth in 28 U.S.C. § 1961;
2. Plaintiffs' Motion for Post-Judgment interest is **GRANTED**. Defendants are **ORDERED** to include a payment of post-judgment interest in their calculation of Plaintiffs' severance benefits, calculated from April 1, 2004 until the date of payment, at the rate set forth in 28 U.S.C. § 1961;

3. Plaintiffs' Motion for Attorneys' Fees under the terms of the CIC Plan is **GRANTED**. Defendants are **ORDERED** to pay Plaintiffs' counsel an attorneys' fee in the amount of 33 $\frac{1}{3}$ % of the total benefit paid to Plaintiffs. Defendants are also **ORDERED** to pay Plaintiffs' counsel costs in the amount of \$89,091.72.
4. Plaintiffs' Motion for Attorneys' Fees under ERISA is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:

CYNTHIA M. RUFÉ, J.